

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MELANIE KITCHEN,

Plaintiff,

v.

CIVIL ACTION NO: 20-C-1016

WALMART, INC., a Delaware corporation; and
ZACHARY ROBERTS, individually;

Defendants.

S U M M O N S

TO THE ABOVE NAMED DEFENDANT:

WALMART, INC.
c/o CT Corporation System
1627 Quarrier Street
Charleston, WV 25311-2124

ACCEPTED FOR
SERVICE OF PROCESS
2021 JAN 22 A 11:26
SECRETARY OF STATE
STATE OF WEST VIRGINIA

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Mark A. Atkinson and John-Mark Atkinson, plaintiff's attorneys, whose address is Post Office Box 549, Charleston, West Virginia, 25322-0549, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true and exact copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 1112312020

Cathy S. Gatson, Clerk

Clerk of the Court

M. O. O. O.
Deputy Clerk

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2020 NOV 23 PM 12:57

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

MELANIE KITCHEN,

Plaintiff,

v.

CIVIL ACTION NO: 20-C-1014

WALMART, INC., a Delaware corporation; and
ZACHARY ROBERTS, individually;

Defendants.

COMPLAINT

1. The plaintiff, Melanie Kitchen, brings this action against the defendants for their discriminatory actions against the plaintiff.

PARTIES

2. The plaintiff, Melanie Kitchen, was at all times relevant herein, a resident of Lincoln County, West Virginia.

3. The defendant Walmart, Inc. is a Delaware corporation with its principal place of business at Bentonville, Arkansas, and at all times relevant herein was doing business in Kanawha County, West Virginia.

4. The defendant Zachary Roberts upon information and belief, is a resident of the state of West Virginia and, at all times relevant herein, was a supervisor for the defendant, acting within the scope of his employment, and was involved in the decision to terminate the plaintiff.

FACTS

5. The plaintiff, Melanie Kitchen, was employed by the defendants for approximately fourteen years.

6. During her employment, Melanie Kitchen consistently performed her duties in a satisfactory manner and met the reasonable expectations of her employers.

7. During the time of her employment with the defendants, the plaintiff's mother was diagnosed with cancer and dementia.

8. The plaintiff was her mother's medical power of attorney.

9. In approximately June 2019, the plaintiff filed for an intermediate leave of absence as a result of an injury she sustained in a fall.

10. In approximately June 2019, the plaintiff's request for an intermediate leave of absence was approved by the defendants.

11. As a result of her injury, the plaintiff was off of work for approximately three days.

12. At approximately the end of September 2019, the plaintiff's mother's health condition seriously worsened and she was hospitalized.

13. At approximately the end of September or early October 2019, the plaintiff filed for FMLA leave as a result of her mother's serious health condition.

14. The plaintiff provided all necessary information to the appropriate health care providers who in turn provided it to the defendants.

15. The plaintiff missed nine days of work while staying with her mother in the hospital.

16. On each day of work the plaintiff missed, she called into the defendants' call-in hotline to appropriately report her absence.

17. The plaintiff had 96 paid personal hours and 155 sick hours available at the time she missed work while staying with the mother in the hospital.

18. The plaintiff returned to work in approximately mid-October 2019.

19. Defendants did not mention any issues or concerns with the plaintiff's absences when she returned to work in approximately mid-October 2019.

20. On or about November 22, 2019, the defendants unlawfully terminated the plaintiff's employment.

FIRST CAUSE OF ACTION

21. The defendants' actions constitute an unlawful retaliatory discharge motivated, in whole or in part, by the plaintiff's attempt to receive FMLA benefits, in violation of 29 U.S. Code § 2615.

22. As a direct and proximate result of the defendants' actions, the plaintiff has suffered, and will continue to suffer, lost wages and benefits including interest pursuant to 29 U.S. Code § 2617 (a)(1).

23. As a direct and proximate result of the defendants' actions, the plaintiff is entitled to liquidated damages equal to the sum of her lost wages and benefits pursuant to 29 U.S. Code § 2617 (a)(1).

24. As a direct and proximate result of the defendants' aforesaid actions, the plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

25. The defendants' actions were not in good faith and entitle the plaintiff to attorney fees and costs pursuant to 29 U.S. Code § 2617 (a)(3).


PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for the following relief:

1. Damages set forth in this Complaint, including lost wages and benefits, back pay, front pay, liquidated damages, damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury;
2. Prejudgment interest as provided by law;
3. Attorney fees and costs; and
4. Such further relief as this court may deem just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE TO A JURY.

MELANIE KITCHEN
By Counsel



Mark A. Atkinson (WVSB #184)
John-Mark Atkinson (WVSB #12014)
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